IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1736 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02/11/2004 in WVMP No.2929 of 2004 and WPMP No.8760 of 2004 in WP NO : 6743 OF 2004 on the file of the High Court.)

Between:

Mareedu Venkateswara Rao, S/o. Lakshmaiah,
R/o. Konnamgunta, H/o. Booravancha, Nuzvid Rural Mandal,
Krishna District.

..... APPELLANT

AND

1. The Election Tribunal-cum-the Junior Civil Judge, Nuzvid, Krishna District.
2 Pamarthi Venugopala Rao, S/o. Sri Atchaiah,
R/o. Konnamgunta, H/o. Booravancha, Nuzvid Mandal, Krishna District.
3 The Election Officer,
Booravancha Gram Panchayat, Nuzvid, Krishna District.
4 The District Election Authority-cum- the District Collector,
Krishna District, at Machilipatnam.

.....RESPONDENTS

Counsel for the Appellant:MR.M.V.DURGA PRASAD

Counsel for the respondent No.1: None appeared.

Counsel for the Respondent No.2: Mr.K.Ratnam

Counsel for the Respondent No.3: Mr.D.Srinivas
Counsel for the Respondent No.4: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the admission stage made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

On mention being made, appeal was taken up, which is against the order passed by learned single Judge vacating the interim order.

Grievance of the appellant is that rule nisi has been issued in the writ petition and in the writ petition, order passed on 29th March, 2004 in I.A.No.39 of 2004 in O.P.No.4 of 2001 by the Election Tribunal is under challenge. By the said order, Election Tribunal has allowed the application of the second respondent and directed the third respondent to produce marked electoral rolls and used ballot papers for just decision of the case, which according to the learned counsel for the appellant, is impermissible and for that reason alone, rule nisi has been issued in the writ petition. There was interim order granted by the court. The same has been vacated, thus making the writ petition itself infructuous.

By the order impugned in the writ appeal, learned single Judge without assigning any reason or valid reasons proceeded to vacate the order. The only circumstance which appears to have weighed with the learned single Judge appears to be stay of trial. In case the learned single Judge was convinced that there need not be any stay of trial of the election petition, there was other course open before the learned single Judge viz., hearing and deciding the writ petition itself. But passing an order vacating the interim order definitely had the effect of making the writ petition infructuous. What would happen in the event of the writ petition being allowed? Necessarily, the Election Tribunal will have no jurisdiction to look into the electoral rolls and the used ballot papers. As such, order of learned single Judge is liable to be set aside.

Writ appeal is allowed. Order impugned in the appeal is set aside. WVMP No.2929 of 2004 in W.P.No.6743 of 2004 is dismissed. W.P.M.P.No.8760 of 2004 in W.P.No.6743 of 2004 is allowed. Interim order passed by learned single Judge shall continue to remain in operation till writ petition is heard and

decided.

Writ petition will be posted before the learned single Judge for being heard on 14th December, 2004.

DEVINDER GUPTA, CJ

3-11-2004

C.V.RAMULU, J

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Note:

Issue wire at party's cost.

(BO)

Court Master

To

1. The Election Tribunal-cum-the Junior Civil Judge, Nuzvid, Krishna District.
2 The Election Officer,
Booravancha Gram Panchayat, Nuzvid, Krishna District.
3 The District Election Authority-cum- the District Collector,
Krishna District, at Machilipatnam.

4 2 CCs to the Govt. Pleader for Panchayat Raj and Rural Development, High Court Buildings, Hyderabad (OUT).

5 2 CD copies.